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Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible)	
Telephones)	
)	
Biennial Regulatory Review – Amendment)	WT Docket No. 03-264
of Parts 1, 22, 24, 27, and 90 to Streamline)	
and Harmonize Various Rules Affecting)	
Wireless Radio Services)	
)	
Former Nextel Communications, Inc.)	WT Docket No. 06-169
Upper 700 MHz Guard Band Licenses and)	
Revisions to Part 27 of the Commission's)	
Rules)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	
)	
Development of Operational, Technical)	WT Docket No. 96-86
and Spectrum Requirements for Meeting)	
Federal, State and Local Public Safety)	
Communications Requirements Through)	
the Year 2010)	
)	
Declaratory Ruling on Reporting)	WT Docket No. 07-166
Requirement under Commission's Part 1)	
Anti-Collusion Rule)	

JOINT REPLY COMMENTS OF
PIERCE TRANSIT AND THE COMMONWEALTH OF VIRGINIA

Pierce County Public Transportation Benefit Area Corporation ("Pierce Transit") and the Commonwealth of Virginia, by their respective undersigned counsel, hereby submit these Joint

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Reply Comments in response to comments to their respective Petitions for Reconsideration¹ of the Federal Communications Commission's ("Commission") Second Report and Order in the captioned dockets.²

The 700 MHz proceeding has proven to be extremely complex and highly contentious, affecting numerous Commission dockets and hundreds of entities and organizations around the country. The Second Report and Order itself has spawned multiple petitions for reconsideration, innumerable *ex parte* filings, and scores of comments on those petitions – with one notable exception. Not a single entity has come out in support of the Second Report and Order on the issues raised by Pierce Transit and the Commonwealth of Virginia in their Petitions or in opposition to the relief sought. Quite to the contrary, the comments filed on the public safety incumbents' Petitions were unanimous in their support for the parties' request that the Commission reconsider: (1) its unreasonable deadline prohibiting new narrowband operations by 700 MHz public safety incumbents outside the new 700 MHz consolidated narrowband blocks adopted in the Second Report and Order, after August 30, 2007 (the "August 30 Deadline"); (2) its decision to limit reimbursement to 700 MHz incumbents for relocation expenses associated with the migration and consolidation of incumbent 700 MHz public safety operations to radios and base stations actually deployed and in operation as of the August 30 Deadline;³ and (3) the unprecedented \$10 million cap on total relocation costs for all 700 MHz

¹ *Pierce Transit Petition for Reconsideration*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed September 24, 2007) (the "Pierce Transit Petition"); *Commonwealth of Virginia Petition for Reconsideration*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed September 24, 2007) (the "Commonwealth Petition").

² *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Second Report and Order, WT Docket No. 06-150, *et al.*, FCC 07-132 (rel. Aug. 10, 2007) ("Second Report and Order").

³ Pierce Transit filed a Request for Waiver on August 30, 2007, detailing the history of its system and the necessity of a waiver of the Commission's deadline regarding new operations and limitations on reimbursements for equipment not yet in operation. *See Pierce Transit Waiver-Expedited Action Requested*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed Aug. 30, 2007). The Commonwealth of Virginia also filed a

public safety incumbents (the “\$10 Million Cap”).⁴ The Commission should take immediate steps to remove the cloud that has surrounded the ongoing 700 MHz public safety deployments since the release of the Second Report and Order, and immediately adopt an order on reconsideration granting the relief sought. At a minimum, pending action on reconsideration, the Public Safety and Homeland Security Bureau should be directed to promptly grant the pending waiver petitions of the 700 MHz incumbents, making clear that incumbents can continue with ongoing deployments, and that equipment contracted for, but that will not be operational until after the August 30 Deadline, remains eligible for full reimbursement.

DISCUSSION

A. The Favorable Comments Received and the Absence of Opposition Reaffirm the Need for the Commission to Clarify That Parties Already in the Process of Deployment May Continue to Deploy, and Be Reimbursed for Such Deployment.

The Commission’s Second Report and Order directly impacted eight (8) separate and concurrent proceedings before the Commission, each of which typically has spanned years and involved dozens if not hundreds of participating entities. The contents of the Second Report and Order also dramatically altered Commission precedent regarding the use of hard monetary caps for reimbursement in rebanding proceedings, and caused parties presently deploying 700 MHz

waiver request on August 30, 2007. *See Commonwealth of Virginia Waiver*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed August 30, 2007). Both Pierce Transit and the Commonwealth of Virginia also filed supplements to their respective waiver requests at the request of Commission staff. In addition to waiver requests by Pierce Transit and the Commonwealth of Virginia, to date at least 13 additional requests for waivers of the August 30 Deadline have been filed. These include waiver requests by the States of Illinois, Arkansas, Nebraska, Louisiana, Colorado, Hawaii, and New York; the Harris County (TX) Information Technology Center; Bingham County, ID; Bannock County, ID; the City of Stamford, CT; Ada County, ID; and the City of Phoenix, AZ. The number of waiver requests that have been filed – representing at least 1/3 of all 700 MHz public safety incumbents – strongly suggests the need to rectify this issue through a revision to or clarification of the rules.

⁴ See Public Notice, *New Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Narrowband Blocks Prohibited*, DA 07-3644 (Pub. Safety and Homeland Sec. Bureau, Aug. 16, 2007).

systems to scramble to meet the Commission's short deadlines. Yet despite the number of proceedings implicated, the large number of participating parties, and the huge impact of the Commission's decision, the comments to the subsequent Petitions for Reconsideration by Pierce Transit and the Commonwealth of Virginia have been noteworthy in their unanimity. *No party* has filed comments in opposition to the Pierce Transit Petition or to the Commonwealth Petition.

To the contrary, a number of other parties filed comments in *support* of the issues raised by Pierce Transit and the Commonwealth of Virginia. The State of Nebraska noted that "Nebraska public safety agencies are also concerned that the [Second Report and Order] ... will disrupt their implementation of public safety communications equipment at significant cost and hardship."⁵ The National Association of Telecommunications Officers and Advisors ("NATOA") likewise offered its support, noting that the "Commission's action in setting an arbitrary deadline of August 30, 2007 and a reimbursement cap of only \$10 million merely confirms what NATOA and other national local government associations feared would happen."⁶ In light of the potential and likely injury public safety entities would suffer under the Second Report and Order, NATOA advised that the "Commission should follow Pierce Transit's requests and remove the \$10 million cap, allow full reimbursement for all public safety relocation costs, and make it clear that parties may continue to construct and obtain reimbursement expenses for systems that are in the process of deployment."⁷

⁵ See *State of Nebraska Opposition to Petitions for Reconsideration (In Support of) Commonwealth of Virginia and Pierce County, Washington*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed October 17, 2007), at 2.

⁶ See *Comments of the National Association of Telecommunications Officers and Advisors*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed October 17, 2007), at 10 ("NATOA Comments").

⁷ *Id.*

Equally telling is the support provided by Motorola, Inc. (“Motorola”) in its filed comments.⁸ Motorola “agrees with the Commonwealth of Virginia and Pierce Transit that the Commission must ensure that the reconfiguration process does not impede the on-going deployment of public safety systems.”⁹ As Pierce Transit and the Commonwealth of Virginia are both already in the process of deploying 700 MHz systems and have already incurred significant sunk costs, “[b]y interrupting deployment of planned public safety systems, the Commission has imposed significant burdens on those public safety entities that were in the process of deploying planned communications systems”¹⁰ As a consequence, the Commission has made it “virtually impossible for public safety to effectively implement systems that they have already spent significant resources planning and implementing.”¹¹

The cumulative effect of these comments is that entities as diverse as industry associations, public safety agencies, equipment manufacturers, and the states themselves now speak to the Commission with a single voice: the Commission should repeal its unreasonable deadline prohibiting new narrowband operations by 700 MHz public safety incumbents outside the new 700 MHz consolidated narrowband blocks, and reconsider its decision to limit reimbursement to 700 MHz incumbents for relocation expenses associated with the migration and consolidation of incumbent 700 MHz public safety operations to only that equipment actually in operation as of the August 30 Deadline.

⁸ *Comments of Motorola, Inc. in Support of the Petitions for Reconsideration of the Commonwealth of Virginia and of Pierce Transit*, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed October 17, 2007) (“Motorola Comments”).

⁹ *Motorola Comments*, at 3.

¹⁰ *Id.*, at 6.

¹¹ *Id.*

B. The Comments of Motorola in Support of Pierce Transit and the Commonwealth of Virginia Demonstrate That the Commission's Decision to Establish the \$10 Million Cap Based Solely on Motorola's Projections Was Erroneous and Unreasonable.

Pierce Transit and the Commonwealth of Virginia also seek reconsideration of the Commission's unprecedented creation of the \$10 Million Cap on total reimbursements for the rebanding required under the Second Report and Order.¹² Direct estimates from Pierce Transit and the Commonwealth of Virginia alone indicated the Commission's cost estimates were far too low, as the Commonwealth of Virginia estimated its costs alone would fall into the \$4-5 million range.¹³ Similarly, Pierce Transit estimated its delay costs alone would exceed \$500,000, let alone actual modification costs.¹⁴ And as Pierce Transit pointed out in its Petition, Pierce Transit and the Commonwealth of Virginia are only two of some forty-five 700 MHz public safety incumbents, most of which will incur relocation costs.¹⁵

Combined with these figures, Motorola's comments in support of Pierce Transit and the Commonwealth of Virginia show that the Commission's \$10 Million Cap, beyond being an unprecedented departure from existing practice with insufficient notice to pass muster under the Administrative Procedure Act, is simply unreasonable and without basis in fact. In addition to supporting the need for public safety entities such as Pierce Transit and the Commonwealth of Virginia to continue deploying their systems, Motorola expressly reaffirmed that its initial cost estimates for rebanding were "imperfect and subject to change" and that when it submitted these imperfect estimates to the Commission, it expressly made clear its view that "the actual costs

¹² See *Pierce Transit Petition*, at 6-12; *Commonwealth Petition*, at 10-11.

¹³ *Commonwealth Petition*, at 10.

¹⁴ *Pierce Transit Petition*, at 5.

¹⁵ *Id.*, at 9 and n.14.

should in fact be reimbursed.”¹⁶ Consequently, “Motorola supports petitioners’ requests for reconsideration seeking changes so as to not impede deployment of public safety systems and to reimburse actual costs incurred as a result of reconsideration.”¹⁷

Thus, the “sole basis”¹⁸ for the Commission’s \$10 Million Cap has been refuted by the very party that provided the information upon which the Commission relied. Motorola has made clear that its cost estimates were never intended to serve as the basis for establishing the \$10 Million Cap or any cap at all, as the “cost to public safety is not justified by the marginal benefit of capping costs of rebanding.”¹⁹ Given Motorola’s clarification of the actual purpose and nature of its cost estimates, the Commission’s \$10 Million Cap stands without any support in the record and has received no support from any commenting party. The Commission should return to its prior established precedent by allowing for the reimbursement of *all* of an incumbent’s relocation costs, without a cap.²⁰

¹⁶ *Motorola Comments*, at 5.

¹⁷ *Id.*; see also *NATO Comments* at 11 (“It is particularly troubling that the Commission apparently used, as its “sole basis” for establishing the nationwide cap, an estimate provided by Motorola.”).

¹⁸ Second Report and Order, ¶ 341.

¹⁹ *Motorola Comments*, at 6.

²⁰ See *Pierce Transit Petition*, at 7-8.

CONCLUSION

For the foregoing reasons, the Commission should reconsider the Second Report and Order by: (1) removing the \$10 Million Cap; (2) making clear that parties can continue to construct systems that have already been purchased and are in the process of deployment after the August 30 Deadline; and (3) allowing full reimbursement for the relocation of all such systems.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

PIERCE TRANSIT

By: /s/
Peter E. Broadbent, Jr.
Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219.
(804) 697-4109

Attorney for the Commonwealth of Virginia

By: /s/
Martin L. Stern
Brendon P. Fowler
Kirkpatrick & Lockhart Preston Gates
Ellis LLP
1601 K Street, N.W.
Washington, D.C. 20006-1600
(202) 778-9000

Attorneys for Pierce Transit

Dated: October 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October 2007, a copy of the foregoing Joint Reply Comments of Pierce Transit and the Commonwealth of Virginia were served by hand on each of the persons listed on the attached service list.

/s/
Sharon Agranov

SERVICE LIST

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Aaron Goldberger
Office of the Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Bruce Liang Gottlieb
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Renee Crittendon
Office of Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Chris Moore
Office of Commissioner Deborah Taylor Tate
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Angela Giancarlo
Office of Commissioner Robert M. McDowell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Derek Poarch, Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Erika Olsen, Deputy Bureau Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Jeff Cohen
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Carol Simpson
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Jeannie A. Benfaida
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Best Copy and Printing, Inc.
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554